CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,	H021902
Plaintiff and Respondent,	(Santa Clara County Super. Ct. No. 210319)
v.	
DAVID WESLEY HAWKINS,	ORDER MODIFYING OPINION AND DENYING REHEARING
Defendant and Appellant.	**[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on June 5, 2002, be modified in the following particulars:

1. On page 9, line 4 of the fourth full paragraph, delete the reference to "subdivision (i)" and replace with subdivision (h).

2. On page 10, line 1, beginning "(Stats. 1989, ch. 1357, § 1, p. 5725.)" is deleted and the following is inserted in its place:

(Stats. 1989, ch. 1357, § 1.3, p. 5738.)

3. On page 10, line 3 of the first full paragraph, delete the reference to "subdivision (i)" and replace with subdivision (h).

4. On page 11, line 5 of the first paragraph, beginning "(Stats. 1989, ch. 1357, § 1, p. 5727" is deleted and the following is inserted in its place.

(Stats. 1989, ch. 1357, § 1.3, p. 5740

5. On page 11, line 1 of the first paragraph, delete the reference to "subdivision (i)(2)" and replace with subdivision (h)(2).

6. On page 11, the second full paragraph is deleted and the following is inserted in its place:

By its own terms, former subdivision (h)(2) created an exception or exemption limited to the crime defined in subdivision (c)(3) and not the crime defined in subdivision (c)(2) as the unauthorized taking, copying, or using of computer data with which defendant was charged. However, this exemption in (h)(2) was expanded to other crimes in subdivision (i) as follows. "No activity exempted from prosecution under paragraph (2) of subdivision (h) which incidentally violates paragraph (2), (4), or (7) of subdivision (c) shall be prosecuted under those paragraphs." (Stats. 1989, ch. 1357, § 1.3, p. 5740.)

7. On page 11, line 1 of the fourth full paragraph, delete the reference to "subdivision (i)(2)" and replace with subdivision (h)(2).

8. On page 12, line 6 of the first paragraph, delete the words "former subdivision (j)" and replace with subdivision (i).

9. On page 13, first full paragraph, delete the first sentence beginning with "We conclude" and insert the following so the sentence reads:

We conclude that the phrase "incidentally violates" in subdivision (i) does not render the statute unconstitutionally vague.

10. On page 17, at the end of the third full paragraph, after the sentence ending "no applicable hearsay exception" add the following sentence, including the footnote, so the sentence reads:

Defendant contended that computer dates and times were notoriously unreliable and that reliability had to be established.[8]

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[8] The reporter's transcript attributed these statements to the prosecutor, but from the context it appears they were made by defense counsel.

11. On page 21, delete the fourth full paragraph in its entirety.

12. On page 21, delete the first sentence of the fifth full paragraph beginning with "Because defendant" and insert the following sentence in its place so the sentence reads:

The trial judge did not have much information on the topic of reliability at the time he ruled the printouts admissible.

The petition for rehearing is denied.

This modification does not effect a change in the judgment.

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BAMATTRE-MANOUKIAN, ACTING P.J.

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MIHARA, J.

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RUSHING, J.